

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RESTORATION ST. LOUIS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
3RD ST. IA LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	

NOTICE OF REMOVAL

COMES NOW Defendant 3RD ST. IA LLC (“3RD ST”) or (“Defendant”), by and through its attorneys, TUETH KEENEY COOPER MOHAN & JACKSTADT, P.C., and hereby removes the above-captioned case from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division. In support of this removal, Defendant respectfully states to the Court:

1. On or about February 22, 2013, Plaintiff Restoration St. Louis, Inc. filed a one-count Petition (“Petition”) in the Circuit Court of St. Louis County, Missouri, Case No. 13SL-CC00644 (“St. Louis County Action”).
2. On or about March 8, 2013, Intervenor St. Louis Title, LLC filed its Motion to Intervene by Right or in the Alternative by Permission.
3. Defendant 3RD ST. was served a copy of the Summons and Petition on March 13, 2013.

4. Based on the above, this Notice of Removal is timely, in that it is being filed “within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief.” 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), attached to this Notice of Removal is a complete copy of all process, pleadings and orders served upon Defendant, including a copy of the court’s docket, from the court’s file in the St. Louis County Action. These documents are attached hereto and filed herewith as **Exhibit 1**. *See* 28 U.S.C. § 1446(a); Fed. R. Civ. P. 81; Local Rule 2.03.

6. The above-described state court action, of which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, 1441 and 1446, and all other applicable law, is properly removable to this Court in that this Court has original subject matter jurisdiction over this action because complete diversity of citizenship exists between the Plaintiff and Defendant named in the Petition, and the amount of controversy, exclusive of interest and costs, exceeds the sum of \$75,000. In particular:

7. Plaintiff is incorporated under the laws of the State of Missouri, with its principal place of business within Missouri and is a citizen of the State of Missouri.

8. Defendant is a limited liability company, with three members, and has its principal place of business in the State of New York. 3rd ST IA LLC is a not a citizen of the State of Missouri. None of the members of Defendant 3rd ST IA LLC is a citizen of the State of Missouri.

9. Pending Defendant Intervenor St. Louis Title, LLC is not indispensable and therefore diversity jurisdiction exists whether the court grants intervention as of right or

permissively pursuant to 28 U.S.C.A. § 1367. See *Conseco v. Wells Fargo Fin. Leasing, Inc.*, 204 F. Supp. 2d 1186, 1193 (S.D. Iowa 2002) (“In a case founded solely on the court’s diversity jurisdiction, the claims of a party who intervenes as a defendant, of right or permissively, are within the court’s supplemental jurisdiction [pursuant to 28 U.S.C.A. § 1367] if part of the same case or controversy as the claims in the original action.”)

10. With respect to the amount in controversy, Plaintiff’s Petition for Breach of Contract seeks a judgment against Defendant declaring that it is entitled to an award in excess of \$75,000.

11. Venue of this removed action is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the St. Louis County Action was pending. 28 U.S.C. § 1441(a) and (b).

12. This action is not an action described in 28 U.S.C. §1445.

13. Written notice of the filing of this Notice of and Petition for Removal has been served upon Plaintiff’s counsel of record, Aaron D. French and Jesse B. Rochman, as well as counsel for Pending Defendant Intervenor, Roger W. Pecha and Conn Q. Davis.

14. A true and accurate copy of this Notice of Removal will be filed with the Clerk of Court, in the Circuit Court of St. Louis County, State of Missouri.

15. Also filed with this Notice of Removal are the Civil Cover Sheet, Original Filing Form, and the Disclosure of Corporate Interests Certificate for Defendant 3RD ST.

16. This Notice is not a general appearance or waiver of any rights or defenses, including, but not limited to, lack of personal or subject matter jurisdiction. Counsel for

Defendant certifies that the allegations set forth above have been stated in accordance with the requirements of Federal Rule of Civil Procedure 11.

17. Defendant demands a trial by jury on all issues so triable.

18. Defendant, by this Notice, has satisfied all jurisdictional requirements for the removal of this action from the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.

WHEREFORE, Defendant 3RD ST. gives notice that the above-captioned action, initiated in the Circuit Court of St. Louis County, Missouri, be removed to the United States District Court for the Eastern District of Missouri, Eastern Division, and proceed in this Court for the reasons set forth above.

Dated: April 10, 2013

RESPECTFULLY SUBMITTED,

TUETH KEENEY COOPER
MOHAN & JAACKSTADT, P.C.

By: /s/ John M. Reynolds
John M. Reynolds 46931MO
34 N. Meramec, Suite 600
St. Louis, Missouri 63105
(314) 880-3600
(314) 880-3601 Facsimile
jreynolds@tuethkeeney.com

Attorneys for Defendant 3RD ST. IA LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed using the Court's electronic filing system, served via that system to those registered, and by United States mail, first-class postage prepaid, on this 10th day of April, 2013, upon the following:

Aaron D. French 50759MO
Jesse B. Rochman 60712MO
Sandberg Phoenix & von Gontard P.C.
600 Washington Ave. 15th Floor
St. Louis MO 63101-1331
314-231-3332
314-241-7604 Facsimile
afrench@sandbergphoenix.com
jrochman@sandbergphoenix.com

Attorneys for Plaintiff

Roger W. Pecha 41853MO
Conn Q. Davis 62835MO
Jenkins & Kling, P.C.
150 N. Meramec, Suite 400
St. Louis MO 63105
314-721-2525
314-721-5525 Facsimile
rpecha@jenkinskling.com
cdavis@jenkinskling.com

Attorneys for Pending Intervener St. Louis Title, LLC

/s/ John M. Reynolds